

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the Name of Allah, The Beneficent, The Merciful

نَحْمَدُهُ وَنُصَلِّي عَلَى رَسُولِهِ الْكَرِيمِ
وَ عَلَى عَبْدِهِ الْمَسِيحِ الْمَوْعُودِ

*We send prayers and blessings upon His (swt) Noble Messenger (saw)
And upon his (saw) Servant, the Promised Messiah (as)*

وَلَوْ شَاءَ رَبُّكَ لَجَعَلَ النَّاسَ أُمَّةً وَاحِدَةً وَلَا يَزَالُونَ مُخْتَلِفِينَ

*“Had thy Lord enforced His will, He would surely have made mankind one people;
as it is, they will not cease to differ.”¹*

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(incl. Arabic text, transliteration and transliteration in brackets)

¹ Chapter Hūd (11); Verse 119. Khan, M.Z., *The Qur’ān*, (1981, Curzon Press Ltd.,)

1 Introduction

Freedom of Expression is generally accepted as a subset of the Freedom of Speech,² some even regard it as the most important aspect of the freedom of speech.

Freedom of Expression finds ample and express mention in the classical sources and traditional texts of Islām and as a specific concept within the *Sharī'ah* and is known as *Hurriyyat al-Ra'y*, which literally translates to 'freedom of opinion'.

This essay presupposes that the 'Freedom of Expression' that is being analysed is that which has recently been given much headline space in the media, and that which refers to freedoms to express one's opinions:

1. ...about Islām, Allah, and the Master-Prophet (saw) by Muslims
2. ...about Islām, Allah, and the Master-Prophet (saw) by non-Muslims³

2 The Freedom of Expression – concepts and principles⁴

In order to understand the freedom of expression or opinion, it is necessary to understand the various categories of *Ra'y* (opinion).

Generally *Ra'y* is classified into three types: praiseworthy, blameworthy, or doubtful.⁵ Praiseworthy opinion is that which elaborates on the *Qur'ān*, the *Sunnah*, the opinion of the companions, *Ra'y* which consists of *ijtihād* and *Ra'y* which is arrived at as a result of consultation.

Before venturing into the details of the relevant blameworthy opinions, it behoves those who have a little or reading knowledge of the *Sharī'ah* to understand the

² 'Freedom of Speech' is regarded as a subset within Islāmic Law and is generally distinguished in the Islamic scholastic tradition by referring to it as '*Hurriyyat al-Qawl*', whereas 'Freedom of Expression' is a specific subset within 'freedom of speech' and is referred to as '*Hurriyyat al-Ra'y*'.

³ This short essay will analyse these two areas with emphasis on the latter, drawing upon traditional sources of Islām and the opinions of the scholars.

⁴ For sake of brevity this essay is limited solely to blameworthy opinion under freedom of expression on the part of Muslims and non-Muslims, and thus the limits of this freedom of expression as detailed within the sources of Islām.

⁵ Kamali, M.H., '*Freedom of Expression in Islām*', (The Islāmic Texts Society, Kuala Lumpur) 1994, p.61.

foundations of the *Sharī'ah*, specifically pertaining to the *Maqāṣid al-Sharī'ah* – the objectives of the implementation of the *Sharī'ah* – with reference to the expression of opinion.

According to the principles of Islāmic jurisprudence, a person may express an opinion, arbitrary or otherwise, and such a one will be free to advance that opinion so long as he does not violate the law concerning blasphemy, sedition and so on. Here, it is absolutely essential to understand that violations of certain laws may be punishable with capital punishment – BUT this will only be the case in countries that purport to be governing their states and implementing the *Sharī'ah* therein. Furthermore, although a state claims to be governing their citizens according to the *Sharī'ah*, whether the implementation of the Islāmic Law is legitimate is another question. This question will be decided by an assessment as to whether the *Maqāṣid al-Sharī'ah*⁶ are being achieved and realised.

2(i) The *Maqāṣid al-Sharī'ah*

Imam Al-Shāṭibī states that the five essential values that Islam seeks to protect and which thus form an integral part of the *Maqāṣid al-Sharī'ah*, are religion, life, intellect, family and property, were all fundamentally elucidated in the Makkan portions of the *Qur'ān*.⁷

The primary and foremost goal of the *Sharī'ah*, “according to most jurists, is the freeing of Man from the grip of his own whims and fancy, so that he may be the servant of Allah by choice, just as he is one without it.”⁸

To strengthen this primary goal, the purposes of the *Sharī'ah* pertain to this world as well as the next and both have the interest of Man in sight.⁹

The purposes of the law, in Imām al-Shaṭībī's (ra) view, are of two types: those that relate to the intention of the Lawgiver (God) and those that relate to the intention of the subject.¹⁰

⁶ Lit. ‘The Objectives sought to be achieved by and through the implementation of the *Sharī'ah*’.

⁷ See generally, Al-Raysuni, A., ‘*Imām Al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law*’, (2006, Islamic Book Trust, Kuala Lumpur), pp.136-147, at p.137

⁸ *Ibid.*, Vol.II, p.168; See also, Nyazee, I.A.K., *Theories of Islamic Law: The Methodology of Ijtihad*, (2002, Islamic Book trust, Kuala Lumpur) p.235

⁹ *Ibid.*, Vol.II, p.6; See also, Nyazee, *Ibid.*, p.235

The fundamental rule with reference to the subject is that his objectives must conform with the intention of the Lawgiver,¹¹ and it is through the interaction of the two intentions that human actions are determined as being within the objectives of the Law (*Maqāṣid al-Sharī'ah*).

The *Maqāṣid al-Sharī'ah* as enumerated by Imām al-Ghazālī (ra) and agreed to by most jurists including Imām al-Shaṭībī (ra) are primarily of two types: purposes pertaining to the Hereafter (*dīnī*) and purposes pertaining to this world (*dunyawī*). The worldly purposes further branch out into four categories: the preservation of life (*naḥṣ*), the preservation of progeny (*naṣl*), the preservation of intelligence ('*aql*) and the preservation of one's wealth (*māl*).¹² Together with religion (*dīn*), these all yield five ultimate purposes of the law and are termed necessities (*ḍarūrāt*) and are the primary purposes of, or objectives sought to be achieved by, the law. The necessities (*ḍarūrāt*) are then followed by the needs (*ḥājāt*) which are additional needs which supplement the primary purposes. The third category of are those things which seek to establish ease and facility and are known as complementary purposes (*taḥsīnāt*).¹³

The jurists break up the *Maqāṣid* into three levels, as explained above. The first level is that of the necessities (*ḍarūrāt*) which they believe have been maintained by all societies as they constitute the fundamental elements of any kind of society. These are the primary *Maqāṣid* and the jurists focus primarily on these. These are then

¹⁰ *Ibid.*, Vol.II, p.5; See also, Nyazee, *Ibid.*, p.237

¹¹ *Ibid.*, Vol.II, p.331; See also, Nyazee, *Ibid.*, p.237

¹² Another jurist, a century later, who was aware of Imām al-Ghazālī's (ra) codification of the *Maqāṣid al-Sharī'ah* as enumerated above was Ibn Rushd (ra), more commonly known as Avveroes. He conducted his own formulation of the *Maqāṣid al-Sharī'ah* and its ultimate values and are found at the end of his *magnus opus*, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (The Distinguished Jurist's Primer). For the full account, See Ibn Rushd, Abu al-Walid Muḥammad ibn Aḥmad ibn Muḥammad (al-Hafid) (d.1198), *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (The Distinguished Jurist's Primer) (trans.), (1994, Garnet Publishing, Centre for Muslim Contribution to Civilisation, Doha, Qatar), Vol II, pp.570-572; "The Qāḍī (Ibn Rushd), may Allāh be pleased with him, said:

It is necessary to know that the rulings (*aḥkām*) of the *Sharī'ah* are divisible into two kinds. One of these is adjudicated by the judges, and the majority of the (*aḥkām*) we have mentioned fall under this category. The second kind are those not adjudicated by the judges, and most of these are in the recommended (*mandūb*) category. This category of the (*aḥkām*) are like responding to the Muslim greeting (*salām*), blessing one who sneezes, and the like, which are mentioned by the jurists at the end of their books that are called *jawāmi'*..."

¹³ Al-Shaṭībī, Abū Ishāq Ibrāhīm, *Al-Muwāfaqāt fī Uṣūl al-Aḥkām*, (1341 AH., Ed. Muḥammad Ḥasanayn Makhlūf, Cairo: *Al-Maṭba'ah al-Salafiyyah*), Vol.II, pp.8-13

supported by the supporting needs (*ḥājāt*), which are then followed by the complementary values and norms (*taḥsīnāt*).¹⁴

The importance of the individual purposes within the necessities (*ḍarūrāt*) is reflected in the order in which they are categorised: Thus religion (*dīn*) has precedence over life (*naḥṣ*), which has precedence over progeny (*naṣl*), which has precedence over intelligence (*‘aql*), which has precedence over wealth (*māl*). Further, each of the primary purposes may be further sub-divided into public and private purposes. The public purposes seek to maintain the interests of the community as a whole, whereas the private purposes promote protection of the rights of the individuals.¹⁵

To illustrate the way in which this philosophy is practiced, Imām al-Shaṭībī (ra) explains, using the example of prayer (*ṣalāt*), he states that the essential parts of the prayer are its elements (*arkān*) and obligatory observances (*farā’iḍ*). Everything else is for its completion and is complementary.¹⁶ The parts of the prayer are categorised amongst the *Maqāṣid* in such a way that “*each outer shell forms a protective boundary for the inner shell. One who crosses the outer shell or boundary will soon demolish the inner shell.*”¹⁷ Thus, the person who gives up the supererogatory prayers (*naḥṣ*) will soon give up those offered by the Prophet (*ṣunan*), and will finally demolish the obligatory prayers (*farā’iḍ*).

For example, he continues, even a drop of wine or a small quantity of it is prohibited, because it leads to consumption of larger quantities, though it does not intoxicate or damage the intellect. A severe penalty is provided for stealing a thing of small value as it leads to the stealing of larger amounts and to robbery.¹⁸ In the same way, the

¹⁴ What is important to note about the significance of each level is that the primary purposes are supported by the secondary and tertiary levels, in absence of which, however, the primary purposes will stand by themselves. This is not true of the lower levels, as the existence of the supporting needs (*ḥājāt*) and complementary values (*taḥsīnāt*) depends upon the primary purposes and cannot be maintained on their own. See, Nyazee, I.A.K., *Theories of Islamic Law: The Methodology of Ijtihad*, (2002, Islamic Book trust, Kuala Lumpur) p.243

¹⁵ Thus, these can be categorised into three: the rights due to Allah, the rights of the community as a whole, and the rights of the individual.

Each primary which is deemed a necessity has its particular supporting needs and complementary norms. See, Nyazee, I.A.K., *Theories of Islamic Law: The Methodology of Ijtihad*, (2002, Islamic Book trust, Kuala Lumpur) p.243

¹⁶ Al-Shāṭibī, Abū Ishāq Ibrāhīm, *Al-Muwāfaqāt fī Uṣūl al-Aḥkām*, (1341 AH., Ed. Muḥammad Ḥasanayn Makhḥūf, Cairo: *Al-Maṭba‘ah al-Salafiyyah*), Vol.II, p.22

¹⁷ Ibid.,

¹⁸ Ibid., Vol.II, pp.22-23

ethical and moral norms hover around and protect the main and essential legal norms. The *ḥājī* and the *taḥsīnī* are, therefore, to be considered the servants of the *Ḍarūrī*.¹⁹

2(ii) *Sabb Allāh wa Sabb al-Rasūl* ²⁰ (Blasphemy)

As outlined in the above section on the *Maqāṣid al-Sharī'ah*, it should be well understood that everything hereafter refers to (1) moral and (2) legal restraints at the disposal of governments and authorities, thus the extent to which governments and authorities can regulate the freedom of expression in Islām according to the Islāmic sources. This section, therefore, hits at the very crux of the matter (on the premise that the above-detailed *Maqāṣid al-Sharī'ah* are satisfied) whereby one commits the offence of '*Sabb Allāh wa Sabb al-Rasūl*' under a distorted notion of the freedom of expression.

It is not an alien concept that a state has the sovereign right, as is established in accepted norms of international law, to govern its citizens according to the principles it deems appropriate. Rules of Islāmic state and governance, too, dictate that violations of the freedom of expression (under the wider ambit of the freedom of speech) which are expressly detailed in the source texts of the *Sharī'ah* require enforcement by the relevant authorities.²¹

A good example would be the *ḥudūd*²² prescribed for the offence of *Qadhf* (slandorous accusation) which is expressly provided for by textual evidence in the *Qur'ān*.²³

The *ḥudūd* are a category of punishments for crimes that include offences against an individual or the society, which, according to Hadhrat Shāh Walī Allāh al-Dehlavi,²⁴

¹⁹ Nyazee, I.A.K., *Supra*, n.15, p.244

²⁰ Lit., 'Blasphemy against Allāh and His Messenger (saw)'.

²¹ *Supra*, n.5, Kamali (1994) p.117

²² Grammatically *ḥadd* literally means 'limit,' 'boundary,' or 'end' whereas *ḥudūd* is the plural form of the word *ḥadd*. [*Mufradāt alfāz al-Qur'ān*, by al-'Allāmah al-Rāghib al-Isfahānī, (2002, Damascus), pp.221-222]

²³ In *Qur'ānic* usage generally refers to the limits as set out by God in the *Qur'ān*, as in the verse:

"...These are the limits [prescribed] by Allah, so transgress them not..."

[The Holy *Qur'ān* 2:230; See also *Mufradāt alfāz al-Qur'ān*, by al-'Allāmah al-Rāghib al-Isfahānī, (2002, Damascus), pp.221]

combine numerous elements of moral turpitude,²⁵ which he further explains with an amazing exposition of the philosophy²⁶ of the crimes to which *ḥadd* is applied.²⁷

For our immediate purposes ‘moral’ crimes²⁸ will not be discussed; rather the current problem of ‘blasphemy’ against Allāh and the Master-Prophet (saw) will be assessed within the purview of freedom of expression, as committed by non-Muslims.²⁹

From its first conception in Islām, as well as in Judaism and Christianity, Blasphemy has always struggled to find its definition, although Prof. Kamali proffers that it’s hallmark is “...a contemptuous and hostile attack on the fundamentals of religion, which offends the sensibilities of its adherents”³⁰ and this author is wont to agree with this as an apt definition for our purposes.

The committal of *Sabb Allāh wa Sabb al-Rasūl* has found Muslims from East to West, campaigning for death³¹ or corporal punishment to be meted out for it’s offenders, but

²⁴ Qutb al-Dīn Aḥmad ibn ‘Abd al-Raḥīm Shāh Walī Allāh al-Dehlwī (1703-1762): an 18th Century jurist, theologian, philosopher, statesman, and Muslim scholar of great repute – widely regarded as a *Mujaddid* (divinely appointed reformer) of Islām.

²⁵ Ghazali, Shaykh Muḥammad al-, *The Socio-Political Thought of Shāh Walī Allāh*, (2004, Adam Distributors & Publishers, New Delhi), p.100

²⁶ Doctrinally, *ḥadd* usually connotes the “fixed penalties determined to be the right of Allah” but this is regarded as a narrower concept of the *ḥudūd*

In this discussion it is important to delineate the rights of Allah and the rights of the individual, and will be understood well at the completion of the following digression which details the classifications for Islamic Criminal Law:

The penalty for an offence against the right of Allah (i.e., that for which Allah has prescribed a punishment to be meted, either for its omission or its performance against in presence of a prohibition) cannot be waived after conviction, whereas the penalty for an offence against the right of an individual(s) can be waived. [Nyazee, I.A.K., *Supra*, n. 14, p.119]

²⁷ Shāh Walī Allāh, *Hujjat Allah al-Balighah*, (1983, Lahore), Vol.II, pp.151-156; “These crimes cause the spread of mischief in the land (*faṣād fī al-arḍ*) and destroy the general peace and tranquillity in the life of the community. Furthermore, they cause damage to the victims and warning the offenders is not sufficient for curbing these crimes. Hence the “public policy sanctioned by the *Sharī’ah* demands that those guilty of such grave crimes as adultery should be exposed to [the] strongest censure and be awarded the severest deterrent punishment. By prescribing these severe punishments, the *Sharī’ah* seeks to eliminate the root cause of a number of evils which generally cause immeasurable mischief. Besides, if adultery is not checked by strong deterrents, it gives rise to countless genealogical, psychological, social and moral problems. Furthermore, unlawful sex-indulgence has a corrupting influence on human temperament and gives rise to incessant fights and disputes among people.”

²⁸ These include crimes pertaining to moral diseases, e.g., backbiting, defamation, derision, exposing others’ weaknesses, etc. See generally Kamali (1994), *Supra*, n.5, pp.117-165

²⁹ I specifically include Apostates under the heading of ‘non-Muslims’ as they effectively leave Islām of their own volition, and thus will not address the punishments of Apostates.

³⁰ *Supra*, n.5, Kamali (1994), p.213

³¹ Some of the ‘ulema have generally subsumed blasphemy under apostasy, explaining that one who blasphemes the essentials of faith cannot fail, at the same time, to renounce it – and this is also under the premise (which this author disagrees with) that apostasy is punishable by death – this author’s view

there is a question as to whether Islām purports such punishments for these malicious offenders, as highlighted by recent events involving blasphemous caricatures of the Noble Prophet (saw) being published in certain sections of the media.

It has to be clarified, also, that a belief such as that of the Christians revering Sayyiduna ‘Isa (as) as the son of God is not blasphemy – even though it even though it contradicts the explicit text of the *Qur’ān* – only to the extent that they hold such a belief as a principle article of their faith, and not to offend Muslim sensibilities.³²

The many biographies of the Master-Prophet (saw) lend prime examples of *Sabb al-Rasūl* within his (saw) own life, in which we find no evidence of the Prophet (saw) penalising such offenders.

Moreover, he (saw) instructed:

قال النبي ﷺ : إِنَّ الْيَهُودَ إِذَا أَسْلَمُوا فَإِنَّمَا يَقُولُ أَحَدُهُم
السَّامَ عَلَيْكُمْ فَقُولُوا وَعَلَيْكُمْ.³³

“When the Jews greet you with the phrase “death be upon you (*al-sām ‘alaykum*)”, then you should simply say “and upon you (*wa ‘alaykum*)””

There are some who assert that this offence committed by the Jew sufficiently warranted the death penalty and that the Prophet (saw) pardoned the offenders due to the weak position of Islām at this time. However, Imam Ibn Taymiyyah (ra) states such an assumption is merely arbitrary and presumptive as the Prophet (saw) would have ordered the relevant punishment, no matter how severe, and the fact that this was not done when Islām was in a stronger position lends credibility to Imam Ibn Taymiyyah’s (ra) reasoning.³⁴

is that the only instance apostasy is punishable by death is when it is accompanied by active rebellion against the government, sedition, disorder in the land or treason. Kamali has explained this very well and interested readers are referred to his exposition of ‘*Riddah*’, supra, n.5, pp.166-end.

³² Supra, n.5, Kamali (1994), p.213; Ibn Taymiyyah, *al-Şārim*, p.539; Ibn Ḥazm, *al-Muḥallā*, XI, p.416

³³ Ibn Taymiyyah, *al-Şārim*, p.539; Ibn Ḥazm, *al-Muḥallā*, XI, p.416

³⁴ Ibn Taymiyyah, *al-Şārim*, p.539

Further on the topic of the blasphemy of a non-Muslim, the scholars of Islāmic jurisprudence³⁵ have identified three possible situations³⁶ by way of which a non-Muslim would be guilty of *Sabb Allāh wa Sabb al-Rasūl*, of which consideration shall be given to that committed by non-Muslims with intent to cause offence.

3 Conclusion

It is true that Imam Ibn Taymiyyah (ra) (d.728/1328), who was a righteous Imam of his age according to Hadhrat Masih-e-Ma'ud (as),³⁷ strongly believed and adduced painstaking evidences to prove that the punishment from *Sabb Allāh wa Sabb al-Rasūl* was death, and this view was shared by the Maliki jurist, Qādī 'Īyād al-Yaḥṣabī (d.544/1149).³⁸

However, as previously touched upon, Blasphemy and apostasy in the period of the Noble Prophet (saw) were dominantly political offences which had religious overtones, whose nearest parallel in our times would be treason. History, however, has changed the landscape from one in which there was no separation between religious or civil authority to one where there now is a very distinct separation – so much that the crime of high treason is treated separately and differently from the crime of blasphemy, with the former being a crime of grievous charge and the latter being one of mere academic importance!

³⁵ See Kamali (1994), Supra, n.5, pp.235-236

³⁶ 1. When a non-Muslim professes an article of his own faith which happens to contradict the Islāmic creed (e.g., professing belief in more than one deity).
2. When a non-Muslim professes something which, although part of his belief, is professed in a way that is injurious or offensive to Muslims (e.g., a non-Muslim scorning an article of the Islāmic faith or mocking the Divine).
3. When the insult is not a part of the faith of its perpetrator and consists of something which is equally forbidden in his own religion.

³⁷ Essence of Islām: Extracts from the Writings, Speeches, Announcements and Discourses of the Promised Messiah Ḥaḍrat Mirza Ghulām Ahmad of Qādiān, (Islām International Publications, 2005) Vol.III, p.208

³⁸ It should, however, be well understood that these scholastic giants were living in times of great dangers and threats to Islām whereby apostasy and blasphemy were not only tantamount to, but were the root cause of, rebellion and disorder in some parts due to the geo-political climates and customs, and that their responses were thus appropriate and legitimate according to the sources of Islāmic jurisprudence, albeit harsh.

Whereas the State of *Madīnah* under the leadership of the Prophet (saw) and the Khulafā al-Rāshidīn was clearly committed to the ideology and practice of the *Sharī'ah*, this is clearly no longer the scenario with the modern-day nation-states. Accordingly, a radical change has taken place with respect to the nature and reception of the offences of blasphemy and apostasy, which are to some extent interlinked in certain cases. It would therefore be reasonable to reflect that change and our perceptions as to the response to such offences, as the geo-political circumstances prevalent in the days of Imam Ibn Taymiyyah (ra) no longer persist. Thus, this author agrees that as blasphemy no longer has offence of treason as its concomitant, it would be inconsistent with the rules of basic analogy and the *Maqāṣid al-Sharī'ah* to treat it in the same way as it was treated in the State of *Madīnah*.

Blasphemy, as a highly adventurous right claimed under the freedom of expression, continues to pose problems to the safety, law and order of society. More worryingly, it highlights the utter hypocrisy with which it is met by the Western States who choose to allow freedom of expression when the subject of such unwarranted and baseless vilification is our Noble Master-Prophet (saw), yet when one makes a statement tantamount to denial of the Holocaust,³⁹ they are subject to imprisonment and full state intervention at any cost!

Notwithstanding all the ills of Blasphemy, what the Muslim Ummah must realise is that, without becoming pacifistic about it, modern-day blasphemy does not in any way threaten the existence, continuity and dynamicism of Islām as a great religion, legal system and civilisation. Thus, although it should not pass without protest from the Muslims, the protests must be academic, philosophical, dialectical and must be grounded in the common and shared values of dignity and respect for humanity.

There is nothing to detract, however, from the fact that under an Islāmic State which is ruled according to the *Sharī'ah* and which satisfies the *Maqāṣid al-Sharī'ah* (an example of which cannot be found today!!) there is the very realistic and legitimate concept of *ta'zīr* punishments that can be imposed on offenders – those that are

³⁹ Although the occurrence of the Holocaust is accepted and a tragedy of human suffering, whilst the event itself is not outright denied, there have been historical studies that have alleged exaggeration as to the number of victims involved.

discretionary, decided by the legitimate legal authority of the State and which can take the form of fines and imprisonment on the basis of preventing disorder and rebellion, and for the promotion and protection of dignity and security for people and their beliefs.